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Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

Report of the Sixth Committee

Rapporteur: Mr. Jean-Cédric **Janssens de Bisthoven** (Belgium)

I. Introduction

1. The item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" was included in the provisional agenda of the sixty-fourth session of the General Assembly pursuant to Assembly resolution 63/127 of 11 December 2008.

2. At its 2nd plenary meeting, on 18 September 2009, the General Assembly, on the recommendation of the General Committee, decided to include the item in its agenda and to allocate it to the Sixth Committee.

3. The Sixth Committee considered the item at its 11th and 25th meetings, on 19 October and 12 November 2009. The views of the representatives who spoke during the Committee's consideration of the item are reflected in the relevant summary records (A/C.6/64/SR.11 and 25).

4. For its consideration of the item, the Committee had before it the following documents:

(a) Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[1]

(b) Report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/64/125);

[1] *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 33* (A/64/33).

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(c) Report of the Secretary-General on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions (A/64/225).

5. At the 11th meeting, on 19 October, the Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization introduced the report of the Special Committee (see A/C.6/64/SR.11).

II. Consideration of draft resolution A/C.6/64/L.9

6. At the 25th meeting, on 12 November, the representative of Egypt, on behalf of the Bureau, introduced a draft resolution entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization" (A/C.6/64/L.9).

7. At the same meeting, the Secretary of the Committee made a statement regarding the financial implications of the draft resolution.

8. Also at the same meeting, the Committee adopted draft resolution A/C.6/64/L.9 without a vote (see para. 10).

9. The representative of the Islamic Republic of Iran, on behalf of the States Members of the United Nations that are members of the Movement of Non-Aligned Countries, made a statement in explanation of position before the adoption of the draft resolution (see A/C.6/64/SR.25).

III. Recommendation of the Sixth Committee

10. The Sixth Committee recommends to the General Assembly the adoption of the following draft resolution:

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

The General Assembly,

Recalling its resolution 3499 (XXX) of 15 December 1975, by which it established the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, and its relevant resolutions adopted at subsequent sessions,

Recalling also its resolution 47/233 of 17 August 1993 on the revitalization of the work of the General Assembly,

Recalling further its resolution 47/62 of 11 December 1992 on the question of equitable representation on and increase in the membership of the Security Council,

Taking note of the report of the Open-ended Working Group on the Question of Equitable Representation on and Increase in the Membership of the Security Council and Other Matters related to the Security Council,[1]

Recalling the elements relevant to the work of the Special Committee contained in its resolution 47/120 B of 20 September 1993,

Recalling also its resolution 51/241 of 31 July 1997 on the strengthening of the United Nations system and its resolution 51/242 of 15 September 1997, entitled "Supplement to an Agenda for Peace", by which it adopted the texts on coordination and the question of sanctions imposed by the United Nations, which are annexed to that resolution,

Concerned about the special economic problems confronting certain States arising from the carrying out of preventive or enforcement measures taken by the Security Council against other States, and taking into account the obligation of Members of the United Nations under Article 49 of the Charter of the United Nations to join in affording mutual assistance in carrying out the measures decided upon by the Council,

Recalling the right of third States confronted with special economic problems of that nature to consult the Security Council with regard to a solution of those problems, in accordance with Article 50 of the Charter,

Recalling also that the International Court of Justice is the principal judicial organ of the United Nations, and reaffirming its authority and independence,

Mindful of the adoption of the revised working papers on the working methods of the Special Committee,[2]

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[1] *Official Records of the General Assembly, Sixty-third Session, Supplement No. 47* (A/63/47).

[2] Ibid., *Sixty-first Session, Supplement No. 33* (A/61/33), para. 72.

Taking note of the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*,[3]

Taking note also of paragraphs 106 to 110, 176 and 177 of the 2005 World Summit Outcome,[4]

Mindful of the decision of the Special Committee in which it expressed its readiness to engage, as appropriate, in the implementation of any decisions that might be taken at the High-level Plenary Meeting of the sixtieth session of the General Assembly in September 2005 that concerned the Charter and any amendments thereto,[5]

Recalling the provisions of its resolutions 50/51 of 11 December 1995, 51/208 of 17 December 1996, 52/162 of 15 December 1997, 53/107 of 8 December 1998, 54/107 of 9 December 1999, 55/157 of 12 December 2000, 56/87 of 12 December 2001, 57/25 of 19 November 2002, 58/80 of 9 December 2003 and 59/45 of 2 December 2004,

Recalling also its resolution 63/127 of 11 December 2008,

Having considered the report of the Special Committee on the work of its session held in 2009,[6]

Noting with appreciation the work done by the Special Committee to encourage States to focus on the need to prevent and to settle peacefully their disputes which are likely to endanger the maintenance of international peace and security,

1. *Takes note* of the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization;[6]

2. *Takes note also* of the document entitled "Introduction and implementation of sanctions imposed by the United Nations" as set out in the annex to the present resolution;

3. *Decides* that the Special Committee shall hold its next session from 1 to 9 March 2010;

4. *Requests* the Special Committee, at its session in 2010, in accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995:

(a) To continue its consideration of all proposals concerning the question of the maintenance of international peace and security in all its aspects in order to strengthen the role of the United Nations, and, in this context, to consider other proposals relating to the maintenance of international peace and security already submitted or which may be submitted to the Special Committee at its session in 2010;

(b) To continue to consider, on a priority basis and in an appropriate substantive manner and framework, the question of the implementation of the

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[3] A/64/125.

[4] See resolution 60/1.

[5] *Official Records of the General Assembly, Sixtieth Session, Supplement No. 33* (A/60/33), para. 77.

[6] Ibid., *Sixty-fourth Session, Supplement No. 33* (A/64/33).

provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter based on all of the related reports of the Secretary-General[7] and the proposals submitted on the question;

(c) To keep on its agenda the question of the peaceful settlement of disputes between States;

(d) To consider, as appropriate, any proposal referred to it by the General Assembly in the implementation of the decisions of the High-level Plenary Meeting of the sixtieth session of the Assembly in September 2005 that concern the Charter and any amendments thereto;

(e) To continue to consider, on a priority basis, ways and means of improving its working methods and enhancing its efficiency with a view to identifying widely acceptable measures for future implementation;

5. *Invites* the Special Committee at its session in 2010 to continue to identify new subjects for consideration in its future work with a view to contributing to the revitalization of the work of the United Nations;

6. *Notes* the readiness of the Special Committee to provide, within its mandate, such assistance as may be sought at the request of other subsidiary bodies of the General Assembly in relation to any issues before them;

7. *Requests* the Special Committee to submit a report on its work to the General Assembly at its sixty-fifth session;

8. *Recognizes* the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work, as well as the importance of having recourse to the Court in the peaceful settlement of disputes, takes note, consistent with Article 96 of the Charter, of the Court's advisory jurisdiction that may be requested by the General Assembly, the Security Council or other authorized organs of the United Nations and the specialized agencies, and requests the Secretary-General to distribute, in due course, the advisory opinions requested by the principal organs of the United Nations as official documents of the United Nations;

9. *Commends* the Secretary-General for the progress made in the preparation of studies of the *Repertory of Practice of United Nations Organs*, including the increased use of the internship programme of the United Nations and further expanded cooperation with academic institutions for this purpose, as well as the progress made towards updating the *Repertoire of the Practice of the Security Council*;

10. *Notes with appreciation* the contributions made by Member States to the trust fund for the updating of the *Repertoire*, as well as the trust fund for the elimination of the backlog in the *Repertory*;

11. *Reiterates* its call for voluntary contributions to the trust fund for the updating of the *Repertoire*; voluntary contributions to the trust fund for the elimination of the backlog in the *Repertory* so as to further support the Secretariat in

[7] A/48/573-S/26705, A/49/356, A/50/60-S/1995/1, A/50/361, A/50/423, A/51/317, A/52/308, A/53/312, A/54/383 and Add.1, A/55/295 and Add.1, A/56/303, A/57/165 and Add.1, A/58/346, A/59/334, A/60/320, A/61/304, A/62/206 and Corr.1, A/63/224 and A/64/225.

carrying out the effective elimination of that backlog; as well as the sponsoring, on a voluntary basis, and with no cost to the United Nations, of associate experts to assist in the updating of the two publications;

12. *Calls upon* the Secretary-General to continue his efforts towards updating the two publications and making them available electronically in all their respective language versions;

13. *Reiterates* the responsibility of the Secretary-General for the quality of the *Repertory* and the *Repertoire*, and with regard to the *Repertoire*, calls upon the Secretary-General to continue to follow the modalities outlined in paragraphs 102 to 106 of the report of the Secretary-General of 18 September 1952;[8]

14. *Requests* the Secretary-General to submit a report on both the *Repertory* and the *Repertoire* to the General Assembly at its sixty-fifth session;

15. *Also requests* the Secretary-General to brief the Special Committee at its next session on the information referred to in paragraph 11 of his report on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions;[9]

16. *Further requests* the Secretary-General to submit a report on the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions to the General Assembly at its sixty-fifth session, under the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization";

17. *Decides* to include in the provisional agenda of its sixty-fifth session the item entitled "Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization".

Annex
Introduction and implementation of sanctions imposed by the United Nations

I. General issues

1. Sanctions remain an important tool under the Charter of the United Nations in efforts to maintain international peace and security without recourse to the use of force. Sanctions should be carefully targeted in support of clear and legitimate objectives under the Charter and be implemented in ways that balance effectiveness to achieve the desired results against possible adverse consequences, including socio-economic and humanitarian consequences, for populations and third States.

2. The purpose of sanctions is to modify the behaviour of the target State, party, individual or entity threatening international peace and security and not to punish or otherwise exact retribution. Sanctions regimes should be commensurate with these objectives.

3. Sanctions may be resorted to by the Security Council when it determines the existence of any threat to the peace, breach of the peace, or act of aggression. The Security Council should be guided by the approach taken in annex II to General

[8] A/2170.
[9] A/64/225.

Assembly resolution 51/242, where it is indicated that sanctions should be resorted to only with the utmost caution, when other peaceful options provided by the Charter are inadequate. The reasons that necessitate the imposition of sanctions should be identified and stated in advance.

4. The Security Council should introduce sanctions in conformity with the provisions of the Charter, taking into account other applicable rules of international law, in particular all of those related to human rights and fundamental freedoms.

5. Best practices and guidelines adopted by the Security Council and the General Assembly in the field of sanctions, in particular those contained in the 2005 World Summit Outcome, General Assembly resolution 51/242 and Security Council resolutions 1730 (2006), 1735 (2006) and 1822 (2008), should be taken into account in the elaboration and implementation of sanctions regimes. The best practices and methods contained in the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997), as taken note of in Security Council resolution 1732 (2006), might also be considered for these purposes.

6. Sanctions should be implemented and monitored effectively with clear benchmarks and should, as appropriate, have an expiration date or be periodically reviewed with a view to lifting them or not, or to adjusting them, taking into account the humanitarian situation and depending on the fulfilment by the target State and other parties of the requirements of the Security Council. Sanctions should remain in place for as limited a period as necessary to achieve their objectives and be lifted once their objectives have been achieved.

7. Sanctions regimes with regard to individuals and entities should ensure that the decision to list such individuals and entities is based on fair and clear procedures, including, as appropriate, a detailed statement of case provided by Member States, and that regular reviews of names on the list are conducted; ensure, to the degree possible, maximum specificity in identifying individuals and entities to be targeted; and ensure also that fair and clear procedures for de-listing exist early in sanctions regimes. Listed individuals and entities should be notified of the decision and of as much detail as possible in the publicly releasable portion of the statement of case. There should be an appropriate mechanism for handling individuals' or entities' requests for de-listing.

II. Unintended side effects of sanctions

8. Sanctions should avoid to the extent possible adverse humanitarian effects or unintended consequences for individuals and entities not targeted or third States. Targeted sanctions are a way of achieving this.

9. An objective assessment of the short-term and long-term socio-economic and humanitarian consequences of sanctions should be conducted by the Security Council and its sanctions committees with the assistance of the Secretariat at the stage of their preparation, as appropriate, and in the course of their implementation. In this regard, the methodology for the assessment of the humanitarian implications of sanctions reflected in the *Sanctions Assessment Handbook* (2004) might be useful.

10. Information on the humanitarian consequences of the introduction and implementation of sanctions, including those which have a bearing on the basic living conditions of the civilian population of the target State, on its socio-economic

development and on third States which have suffered or may suffer as a result of their implementation, may be useful for the Security Council and its sanctions committees to consider.

11. To the maximum extent possible, situations in which the consequences of the introduction of sanctions would inflict considerable material and financial harm on third States or in which the civilian population in the target State or third States would experience considerable adverse consequences should be avoided.

12. Humanitarian and other exemptions should be made available in a consistent manner to all targeted measures such as arms embargoes, travel restrictions, aviation bans and financial sanctions, and considered in accordance with fair and clear procedures.

13. Efforts should be made to ensure that sanctions regimes do not hinder an adequate supply of humanitarian assistance from reaching the civilian population. Targeted States and parties should cooperate to this end. Essential humanitarian assistance should be considered for exemption by the relevant United Nations bodies, including the sanctions committees.

14. The principles of neutrality, independence, transparency, impartiality and non discrimination should guide the provision of humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the civilian population.

15. Humanitarian and medical assistance and other forms of humanitarian support for all sectors and groups of the civilian population should not be provided without the consent of the recipient State or a request on its part.

16. In emergency situations and cases of force majeure (natural disasters, threat of famine, mass disturbances resulting in the disorganization of the country's Government), consideration should be given to the suspension of sanctions in order to prevent a humanitarian disaster. A decision on this must be taken in each specific case.

17. Decisions on sanctions should be in accordance with the purposes and principles set out in the Charter of the United Nations. Sanctions regimes should be designed to avoid unintended consequences in the target State or third States which may lead to violations of human rights and fundamental freedoms.

III. Implementation

18. Sanctions should be implemented in good faith by all States.

19. Monitoring and compliance are first and foremost the responsibility of individual Member States. Member States should endeavour to prevent or correct activities in violation of the sanctions measures within their jurisdiction. In this regard the provisions of the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997) should be taken into account, as appropriate.

20. International monitoring by the Security Council or by one of its subsidiary organs of compliance with sanctions measures, in accordance with relevant Security Council resolutions, can contribute to the effectiveness of United Nations sanctions. States that may require assistance in the implementation and monitoring of sanctions

may seek the assistance of the United Nations or relevant regional organizations and donors.

21. States and relevant international and regional organizations with the capacity to do so should be encouraged to offer appropriate technical and financial assistance to other States to enhance their capacity to implement sanctions effectively.

22. States should be encouraged to cooperate in exchanging information about the legislative, administrative and practical implementation of sanctions.